

## SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 2 section 288d.

### § 1366. Construction of references to laws of the United States or Acts of Congress

For the purposes of this chapter, references to laws of the United States or Acts of Congress do not include laws applicable exclusively to the District of Columbia.

(Added Pub. L. 91-358, title I, §172(c)(1), July 29, 1970, 84 Stat. 590, §1363; renumbered §1364, Pub. L. 95-572, §6(b)(1), Nov. 2, 1978, 92 Stat. 2456; renumbered §1366, Pub. L. 99-336, §6(a)(1)(C), June 19, 1986, 100 Stat. 639.)

### § 1367. Supplemental jurisdiction

(a) Except as provided in subsections (b) and (c) or as expressly provided otherwise by Federal statute, in any civil action of which the district courts have original jurisdiction, the district courts shall have supplemental jurisdiction over all other claims that are so related to claims in the action within such original jurisdiction that they form part of the same case or controversy under Article III of the United States Constitution. Such supplemental jurisdiction shall include claims that involve the joinder or intervention of additional parties.

(b) In any civil action of which the district courts have original jurisdiction founded solely on section 1332 of this title, the district courts shall not have supplemental jurisdiction under subsection (a) over claims by plaintiffs against persons made parties under Rule 14, 19, 20, or 24 of the Federal Rules of Civil Procedure, or over claims by persons proposed to be joined as plaintiffs under Rule 19 of such rules, or seeking to intervene as plaintiffs under Rule 24 of such rules, when exercising supplemental jurisdiction over such claims would be inconsistent with the jurisdictional requirements of section 1332.

(c) The district courts may decline to exercise supplemental jurisdiction over a claim under subsection (a) if—

- (1) the claim raises a novel or complex issue of State law,
- (2) the claim substantially predominates over the claim or claims over which the district court has original jurisdiction,
- (3) the district court has dismissed all claims over which it has original jurisdiction, or
- (4) in exceptional circumstances, there are other compelling reasons for declining jurisdiction.

(d) The period of limitations for any claim asserted under subsection (a), and for any other claim in the same action that is voluntarily dismissed at the same time as or after the dismissal of the claim under subsection (a), shall be tolled while the claim is pending and for a period of 30 days after it is dismissed unless State law provides for a longer tolling period.

(e) As used in this section, the term “State” includes the District of Columbia, the Commonwealth of Puerto Rico, and any territory or possession of the United States.

(Added Pub. L. 101-650, title III, §310(a), Dec. 1, 1990, 104 Stat. 5113.)

## REFERENCES IN TEXT

The Federal Rules of Civil Procedure, referred to in subsec. (b), are set out in the Appendix to this title.

## EFFECTIVE DATE

Section 310(c) of Pub. L. 101-650 provided that: “The amendments made by this section [enacting this section] shall apply to civil actions commenced on or after the date of the enactment of this Act [Dec. 1, 1990].”

## SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 42 section 13981.

### § 1368. Counterclaims in unfair practices in international trade.

The district courts shall have original jurisdiction of any civil action based on a counterclaim raised pursuant to section 337(c) of the Tariff Act of 1930, to the extent that it arises out of the transaction or occurrence that is the subject matter of the opposing party's claim in the proceeding under section 337(a) of that Act.

(Added Pub. L. 103-465, title III, §321(b)(3)(A), Dec. 8, 1994, 108 Stat. 4946.)

## REFERENCES IN TEXT

Section 337 of the Tariff Act of 1930, referred to in text, is classified to section 1337 of Title 19, Customs Duties.

## EFFECTIVE DATE

Section applicable with respect to complaints filed under section 1337 of Title 19, Customs Duties, on or after the date on which the World Trade Organization Agreement enters into force with respect to the United States [Jan. 1, 1995], or in cases under section 1337 of Title 19 in which no complaint is filed, with respect to investigations initiated under such section on or after such date, see section 322 of Pub. L. 103-465, set out as an Effective Date of 1994 Amendment note under section 1337 of Title 19.

## CHAPTER 87—DISTRICT COURTS; VENUE

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## AMENDMENTS

1998—Pub. L. 105-304, title V, §503(c)(3), Oct. 28, 1998, 112 Stat. 2917 inserted “, mask works, and designs” in item 1400.

1996—Pub. L. 104-331, §3(b)(2)(B), Oct. 26, 1996, 110 Stat. 4069, which directed amendment of table of sections for chapter 37 by adding item 1413 at end, was executed by adding item 1413 at end of table of sections for chapter 87 to reflect the probable intent of Congress.

1988—Pub. L. 100-702, title X, §1001(a), Nov. 19, 1988, 102 Stat. 4664, struck out item 1393 “Divisions; single defendant; defendants in different divisions”.

1984—Pub. L. 98-353, title I, §102(b), July 10, 1984, 98 Stat. 335, added items 1408 to 1412.

1978—Pub. L. 95-598, title II, §240(b), Nov. 6, 1978, 92 Stat. 2668, directed the addition of item 1408, “Bankruptcy appeals”, which amendment did not become effective pursuant to section 402(b) of Pub. L. 95-598, as amended, set out as an Effective Date note preceding section 101 of Title 11, Bankruptcy.

1968—Pub. L. 90-296, §2, Apr. 29, 1968, 82 Stat. 110, added item 1407.

#### FEDERAL RULES OF CRIMINAL PROCEDURE

Venue, see rules 18, 20 to 22, Title 18, Appendix, Crimes and Criminal Procedure.

#### CROSS REFERENCES

Criminal cases, venue, see sections 3235 et seq. of Title 18, Crimes and Criminal Procedure.

Jurisdiction of district courts, see sections 1331 et seq. of this title, and Historical and Revision Notes for section 1332 of this title.

Process, see section 1691 et seq. of this title.

#### CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in title 42 section 3612.

### § 1391. Venue generally

(a) A civil action wherein jurisdiction is founded only on diversity of citizenship may, except as otherwise provided by law, be brought only in (1) a judicial district where any defendant resides, if all defendants reside in the same State, (2) a judicial district in which a substantial part of the events or omissions giving rise to the claim occurred, or a substantial part of property that is the subject of the action is situated, or (3) a judicial district in which any defendant is subject to personal jurisdiction at the time the action is commenced, if there is no district in which the action may otherwise be brought.

(b) A civil action wherein jurisdiction is not founded solely on diversity of citizenship may, except as otherwise provided by law, be brought only in (1) a judicial district where any defendant resides, if all defendants reside in the same State, (2) a judicial district in which a substantial part of the events or omissions giving rise to the claim occurred, or a substantial part of property that is the subject of the action is situated, or (3) a judicial district in which any defendant may be found, if there is no district in which the action may otherwise be brought.

(c) For purposes of venue under this chapter, a defendant that is a corporation shall be deemed to reside in any judicial district in which it is subject to personal jurisdiction at the time the action is commenced. In a State which has more than one judicial district and in which a defendant that is a corporation is subject to personal jurisdiction at the time an action is commenced, such corporation shall be deemed to reside in any district in that State within which its contacts would be sufficient to subject it to personal jurisdiction if that district were a separate State, and, if there is no such district, the

corporation shall be deemed to reside in the district within which it has the most significant contacts.

(d) An alien may be sued in any district.

(e) A civil action in which a defendant is an officer or employee of the United States or any agency thereof acting in his official capacity or under color of legal authority, or an agency of the United States, or the United States, may, except as otherwise provided by law, be brought in any judicial district in which (1) a defendant in the action resides, (2) a substantial part of the events or omissions giving rise to the claim occurred, or a substantial part of property that is the subject of the action is situated, or (3) the plaintiff resides if no real property is involved in the action. Additional persons may be joined as parties to any such action in accordance with the Federal Rules of Civil Procedure and with such other venue requirements as would be applicable if the United States or one of its officers, employees, or agencies were not a party.

The summons and complaint in such an action shall be served as provided by the Federal Rules of Civil Procedure except that the delivery of the summons and complaint to the officer or agency as required by the rules may be made by certified mail beyond the territorial limits of the district in which the action is brought.

(f) A civil action against a foreign state as defined in section 1603(a) of this title may be brought—

(1) in any judicial district in which a substantial part of the events or omissions giving rise to the claim occurred, or a substantial part of property that is the subject of the action is situated;

(2) in any judicial district in which the vessel or cargo of a foreign state is situated, if the claim is asserted under section 1605(b) of this title;

(3) in any judicial district in which the agency or instrumentality is licensed to do business or is doing business, if the action is brought against an agency or instrumentality of a foreign state as defined in section 1603(b) of this title; or

(4) in the United States District Court for the District of Columbia if the action is brought against a foreign state or political subdivision thereof.

(June 25, 1948, ch. 646, 62 Stat. 935; Pub. L. 87-748, §2, Oct. 5, 1962, 76 Stat. 744; Pub. L. 88-234, Dec. 23, 1963, 77 Stat. 473; Pub. L. 89-714, §§1, 2, Nov. 2, 1966, 80 Stat. 1111; Pub. L. 94-574, §3, Oct. 21, 1976, 90 Stat. 2721; Pub. L. 94-583, §5, Oct. 21, 1976, 90 Stat. 2897; Pub. L. 100-702, title X, §1013(a), Nov. 19, 1988, 102 Stat. 4669; Pub. L. 101-650, title III, §311, Dec. 1, 1990, 104 Stat. 5114; Pub. L. 102-198, §3, Dec. 9, 1991, 105 Stat. 1623; Pub. L. 102-572, title V, §504, Oct. 29, 1992, 106 Stat. 4513; Pub. L. 104-34, §1, Oct. 3, 1995, 109 Stat. 293.)

#### HISTORICAL AND REVISION NOTES

Based on title 28, U.S.C., 1940 ed., §§111, 112 (Mar. 3, 1911, ch. 231, §§50, 51, 36 Stat. 1101; Sept. 19, 1922, ch. 345, 42 Stat. 849; Mar. 4, 1925, ch. 526, §1, 43 Stat. 1264; Apr. 16, 1936, ch. 230, 49 Stat. 1213).

Section consolidates section 111 of title 28, U.S.C., 1940 ed., with part of section 112 of such title.

The portion of section 112 of title 28, U.S.C., 1940 ed., relating to venue generally constitutes this section and

the parts relating to arrest of the defendant, venue and process in stockholders' actions constitute sections 1401, 1693, and 1695 of this title.

Provision in section 111 of title 28, U.S.C., 1940 ed., that a district court may proceed as to parties before it although one or more defendants do not reside in the district, and that its judgment shall be without prejudice to such absent defendants, was omitted as covered by rule 19(b) of the Federal Rules of Civil Procedure.

Word "action" was substituted for "suit" in view of Rule 2 of the Federal Rules of Civil Procedure.

Word "reside" was substituted for "whereof he is an inhabitant" for clarity inasmuch as "inhabitant" and "resident" are synonymous. (See *Ex parte Shaw*, 1892, 12 S.Ct. 935, 145 U.S. 444, 36 L.Ed. 768; *Standard Stoker Co., Inc. v. Lower*, D.C., 1931, 46 F.2d 678; *Edgewater Realty Co. v. Tennessee Coal, Iron & Railroad Co.*, D.C., 1943, 49 F.Supp. 807.)

Reference to "all plaintiffs" and "all defendants" were substituted for references to "the plaintiff" and "the defendant," in view of many decisions holding that the singular terms were used in a collective sense. (See *Smith v. Lyon*, 1890, 10 S.Ct. 303, 133 U.S. 315, 33 L.Ed. 635; *Hoove v. Jamieson*, 1897, 17 S.Ct. 596, 166 U.S. 395, 41 L.Ed. 1049; and *Fetzer v. Livermore*, D.C., 1926, 15 F.2d 462.)

In subsection (c), references to defendants "found" within a district or voluntarily appearing were omitted. The use of the word "found" made section 111 of title 28, U.S.C., 1940 ed., ambiguous. The argument that an action could be brought in the district where one defendant resided and a nonresident defendant was "found," was rejected in *Camp v. Gress*, 1919, 39 S.Ct. 478, 250 U.S. 308, 63 L.Ed. 997. However, this ambiguity will be obviated in the future by the omission of such reference.

Subsection (d) of this section is added to give statutory recognition to the weight of authority concerning a rule of venue as to which there has been a sharp conflict of decisions. (See *Sandusky Foundry & Machine Co. v. DeLavand*, 1918, D.C.Ohio, 251 F. 631, 632, and cases cited. See also *Keating v. Pennsylvania Co.*, 1917, D.C.Ohio, 245 F. 155 and cases cited.)

Changes were made in phraseology.

#### REFERENCES IN TEXT

The Federal Rules of Civil Procedure, referred to in subsection (e), are set out in the Appendix to this title.

#### AMENDMENTS

1995—Subsec. (a)(3). Pub. L. 104-34 substituted "any defendant is" for "the defendants are".

1992—Subsec. (a)(3). Pub. L. 102-572 inserted before period at end ", if there is no district in which the action may otherwise be brought".

1991—Subsec. (b). Pub. L. 102-198 substituted "in (1)" for "if (1)".

1990—Subsec. (a). Pub. L. 101-650, §311(1), substituted cls. (1) to (3) for "the judicial district where all plaintiffs or all defendants reside, or in which the claim arose".

Subsec. (b). Pub. L. 101-650, §311(2), substituted "may, except as otherwise provided by law, be brought only if" and cls. (1) to (3) for "may be brought only in the judicial district where all defendants reside, or in which the claim arose, except as otherwise provided by law".

Subsec. (e). Pub. L. 101-650, §311(3), substituted "(2) a substantial part of the events or omissions giving rise to the claim occurred, or a substantial part of property that is the subject of the action is situated, or (3)" for "or (2) the cause of action arose, or (3) any real property involved in the action is situated, or (4)".

1988—Subsec. (c). Pub. L. 100-702 amended subsec. (c) generally. Prior to amendment, subsec. (c) read as follows: "A corporation may be sued in any judicial district in which it is incorporated or licensed to do business or is doing business, and such judicial district shall be regarded as the residence of such corporation for venue purposes."

1976—Subsec. (e). Pub. L. 94-574 provided that, in actions against the United States, its agencies, or officers or employees in their official capacities, additional persons may be joined in accordance with the Federal Rules of Civil Procedure and with other venue requirements which would be applicable if the United States, its agencies, or one of its officers or employees were not a party.

Subsec. (f). Pub. L. 94-583 added subsec. (f).

1966—Subsec. (a). Pub. L. 89-714, §1, authorized a civil action to be brought in the judicial district in which the claim arose.

Subsec. (b). Pub. L. 89-714, §1, authorized a civil action to be brought in the judicial district in which the claim arose.

Subsec. (f). Pub. L. 89-714, §2, repealed subsec. (f) which permitted a civil action on a tort claim arising out of the manufacture, assembly, repair, ownership, maintenance, use, or operation of an automobile to be brought in the judicial district wherein the act or omission complained of occurred. Present provisions are now contained in subssecs. (a) and (b) of this section.

1963—Subsec. (f). Pub. L. 88-234 added subsec. (f).

1962—Subsec. (e). Pub. L. 87-748 added subsec. (e).

#### EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102-572 effective Jan. 1, 1993, see section 1101(a) of Pub. L. 102-572, set out as a note under section 905 of Title 2, The Congress.

#### EFFECTIVE DATE OF 1988 AMENDMENT

Section 1013(b) of title X of Pub. L. 100-702 provided that: "The amendment made by this section [amending this section] takes effect 90 days after the date of enactment of this title [Nov. 19, 1988]."

#### EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by Pub. L. 94-583 effective 90 days after Oct. 21, 1976, see section 8 of Pub. L. 94-583, set out as an Effective Date note under section 1602 of this title.

#### FEDERAL RULES OF CIVIL PROCEDURE

Venue unaffected, see rule 82, Appendix to this title.

#### CROSS REFERENCES

Antitrust laws, actions under, see sections 15 and 22 of Title 15, Commerce and Trade.

Change of venue, see section 1404 of this title.

Diversity of citizenship, jurisdiction of district courts, see section 1332 of this title.

Place of arrest in civil action, see section 1693 of this title.

Process, see sections 1691 et seq. of this title.

Process in stockholder's derivative action, see section 1695 of this title.

Residence—

Federal National Mortgage Association as resident of District of Columbia, see section 1717 of Title 12, Banks and Banking.

International Finance Corporation as inhabitant of Federal judicial district in which principal office in United States is located, see section 282f of Title 22, Foreign Relations and Intercourse.

Saint Lawrence Seaway Development Corporation as resident of northern judicial district of New York, see section 984 of Title 33, Navigation and Navigable Waters.

Waiver of venue, see section 1406 of this title.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 15 sections 53, 6103, 6104, 6504; title 19 section 1337; title 22 sections 2901-5, 2900-5; title 42 section 1973aa-2.

### § 1392. Defendants or property in different districts in same State

Any civil action, of a local nature, involving property located in different districts in the

same State, may be brought in any of such districts.

(June 25, 1948, ch. 646, 62 Stat. 935; Pub. L. 104-220, § 1, Oct. 1, 1996, 110 Stat. 3023.)

#### HISTORICAL AND REVISION NOTES

Based on title 28, U.S.C., 1940 ed., §§113, 116 (Mar. 3, 1911, ch. 231, §§52, 55, 36 Stat. 1101, 1102).

Section consolidates section 113 of title 28, U.S.C., 1940 ed., with section 116 of such title.

Last sentence of section 113 of title 28, U.S.C., 1940 ed., relating to execution on judgments or decrees, was omitted as covered by section 2001 et seq. of this title.

Words “civil action” were substituted for “suit” in view of Rule 2 of the Federal Rules of Civil Procedure.

Words of said section 113, “against a single defendant, inhabitant of such State, must be brought in the district where he resides” were omitted as covered by section 1391 of this title.

Words of section 116 of title 28, U.S.C., 1940 ed., “land or other subject matter of a fixed character” were deleted and the word “property” substituted for flexibility and uniformity. (See sections 754, 1692, of this title and reviser’s notes thereunder.)

Words of said section 116, “and the court in which it is brought shall have jurisdiction to hear and decide it, and to cause mesne or final process to be issued and executed, as fully as if the said subject matter were wholly within the district for which such court is constituted” were omitted as surplusage and fully covered by Rule 4 of the Federal Rules of Civil Procedure. Said rule also covers the following omitted language: “A duplicate writ may be issued against the defendants, directed to the marshal of any other district in which any defendant resides.”

Changes were made in phraseology.

#### AMENDMENTS

1996—Pub. L. 104-220 struck out “(b)” before “Any civil action” and struck out subsec. (a) which read as follows: “Any civil action, not of a local nature, against defendants residing in different districts in the same State, may be brought in any of such districts.”

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 42 section 1973aa-2.

### **[§ 1393. Repealed. Pub. L. 100-702, title X, § 1001(a), Nov. 19, 1988, 102 Stat. 4664]**

Section, act June 25, 1948, ch. 646, 62 Stat. 935, related to divisional venue in civil cases of a single defendant or defendants in different divisions.

#### EFFECTIVE DATE OF REPEAL

Section 1001(b) of Pub. L. 100-702 provided that: “The amendments made by this section [repealing this section] take effect 90 days after the date of enactment of this Act [Nov. 19, 1988].”

### **§ 1394. Banking association’s action against Comptroller of Currency**

Any civil action by a national banking association to enjoin the Comptroller of the Currency, under the provisions of any Act of Congress relating to such associations, may be prosecuted in the judicial district where such association is located.

(June 25, 1948, ch. 646, 62 Stat. 935.)

#### HISTORICAL AND REVISION NOTES

Based on title 28, U.S.C., 1940 ed., §110 (Mar. 3, 1911, ch. 231, §49, 36 Stat. 1100).

Words “Any civil action” were substituted for “All proceedings,” in view of Rule 2 of the Federal Rules of Civil Procedure.

Changes were made in phraseology.

#### EXCEPTION AS TO TRANSFER OF FUNCTIONS

Functions vested by any provision of law in the Comptroller of the Currency, referred to in this section, were not included in the transfer of functions of officers, agencies and employees of the Department of the Treasury to the Secretary of the Treasury, made by Reorg. Plan No. 26 of 1950, §1, eff. July 31, 1950, 15 F.R. 4935, 64 Stat. 1280. See section 321(c)(2) of Title 31, Money and Finance.

#### CROSS REFERENCES

Jurisdiction of district court in banking association’s action against the Comptroller of the Currency, see section 1348 of this title.

### **§ 1395. Fine, penalty or forfeiture**

(a) A civil proceeding for the recovery of a pecuniary fine, penalty or forfeiture may be prosecuted in the district where it accrues or the defendant is found.

(b) A civil proceeding for the forfeiture of property may be prosecuted in any district where such property is found.

(c) A civil proceeding for the forfeiture of property seized outside any judicial district may be prosecuted in any district into which the property is brought.

(d) A proceeding in admiralty for the enforcement of fines, penalties and forfeitures against a vessel may be brought in any district in which the vessel is arrested.

(e) Any proceeding for the forfeiture of a vessel or cargo entering a port of entry closed by the President in pursuance of law, or of goods and chattels coming from a State or section declared by proclamation of the President to be in insurrection, or of any vessel or vehicle conveying persons or property to or from such State or section or belonging in whole or in part to a resident thereof, may be prosecuted in any district into which the property is taken and in which the proceeding is instituted.

(June 25, 1948, ch. 646, 62 Stat. 936.)

#### HISTORICAL AND REVISION NOTES

Based on title 28, U.S.C., 1940 ed., §§104, 106, 107, and 108, and section 3745(c) of title 26, U.S.C., 1940 ed., Internal Revenue Code (Mar. 3, 1911, ch. 231, §§43, 45, 46, 47, 36 Stat. 1100; Feb. 10, 1939, ch. 2, §3745(c), 53 Stat. 460).

This section consolidates section 3745(c) of title 26, U.S.C., 1940 ed., with sections 104, 106, 107, and 108 of title 28, U.S.C., 1940 ed., relating to venue in civil proceedings to recover and enforce civil fines, penalties, and forfeitures, pecuniary or otherwise. Subsection (a) is based on said section 104 of title 28 and said section 3745(c) of title 26. Subsections (b) and (c) consolidate such sections 106 and 107 of title 28. Subsection (e) is based on such section 108 of title 28.

Subsection (b) substituted words “may be prosecuted in any district where such property is found” for “shall be prosecuted in the district where the seizure is made,” to include not only property seized, but also all other property subject to forfeiture.

Words “civil” and “fine” were inserted to make this section applicable to the many provisions of the United States Code for fines essentially civil. (See reviser’s note under section 1355 of this title.)

Provisions of section 3745(c) of title 26, U.S.C., 1940 ed., that such suit may be brought “before any other court of competent jurisdiction” were omitted as misleading surplusage, since United States district courts, under section 1355 of this title, have exclusive jurisdiction.

Subsection (d) was added for completeness and clarity.

Changes were made in phraseology.

#### SENATE REVISION AMENDMENT

While section 3745(c) of Title 26, U.S.C., Internal Revenue Code, is one of the sources of this section, it was eliminated from the schedule of repeals by Senate amendment. Therefore, such section 3745(c) remains in Title 26. See 80th Congress Senate Report No. 1559.

#### CROSS REFERENCES

Jurisdiction of district court in action to recover fines, penalties, or forfeitures, see section 1355 of this title.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1355 of this title; title 18 sections 981, 2254; title 21 section 881; title 26 section 7410.

### § 1396. Internal revenue taxes

Any civil action for the collection of internal revenue taxes may be brought in the district where the liability for such tax accrues, in the district of the taxpayer's residence, or in the district where the return was filed.

(June 25, 1948, ch. 646, 62 Stat. 936.)

#### HISTORICAL AND REVISION NOTES

Based on title 28, U.S.C., 1940 ed., §105, and section 3744 of title 26, U.S.C., 1940 ed., Internal Revenue Code (Mar. 3, 1911, ch. 231, §44, 36 Stat. 1100; Feb. 10, 1939, ch. 2, §3744, 53 Stat. 460).

Section consolidates section 3744 of title 26, U.S.C., 1940 ed., Internal Revenue Code, with section 105 of title 28, U.S.C., 1940 ed.

Words "or in the district where the return was filed" are new. This extension of venue will permit of an action in a district easily determinable for collection of revenue earned in several districts, or States, but the return for which is filed with one collector.

Changes were made in phraseology.

#### SENATE REVISION AMENDMENT

While section 3744 of Title 26, U.S.C., Internal Revenue Code [1939], is one of the sources of this section, it was eliminated from the schedule of repeals by Senate amendment. Therefore, it remains in Title 26 [I.R.C. 1939]. See 80th Congress Senate Report No. 1559.

#### CROSS REFERENCES

Jurisdiction of district courts in actions or proceedings under internal-revenue laws, see section 7402 of Title 26, Internal Revenue Code.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 26 section 7410.

### § 1397. Interpleader

Any civil action of interpleader or in the nature of interpleader under section 1335 of this title may be brought in the judicial district in which one or more of the claimants reside.

(June 25, 1948, ch. 646, 62 Stat. 936.)

#### HISTORICAL AND REVISION NOTES

Based on title 28, U.S.C., 1940 ed., §41(26) (Mar. 3, 1911, ch. 231, §24, par. 26, as added Jan. 20, 1936, ch. 13, §1, 49 Stat. 1096).

Provisions of section 41(26) of title 28, U.S.C., 1940 ed., relating to jurisdiction are the basis of section 1335 of this title and other provisions thereof are incorporated in section 2361 of this title.

Words "civil action" were substituted for "suit," in view of Rule 2 of the Federal Rules of Civil Procedure. Changes were made in phraseology.

#### CROSS REFERENCES

Process and procedure in interpleader actions, see section 2361 of this title.

### § 1398. Interstate Commerce Commission's orders

(a) Except as otherwise provided by law, a civil action brought under section 1336(a) of this title shall be brought only in a judicial district in which any of the parties bringing the action resides or has its principal office.

(b) A civil action to enforce, enjoin, set aside, annul, or suspend, in whole or in part, an order of the Interstate Commerce Commission made pursuant to the referral of a question or issue by a district court or by the United States Court of Federal Claims, shall be brought only in the court which referred the question or issue.

(June 25, 1948, ch. 646, 62 Stat. 936; Pub. L. 88-513, §2, Aug. 30, 1964, 78 Stat. 695; Pub. L. 93-584, §2, Jan. 2, 1975, 88 Stat. 1917; Pub. L. 97-164, title I, §130, Apr. 2, 1982, 96 Stat. 39; Pub. L. 102-572, title IX, §902(b)(1), Oct. 29, 1992, 106 Stat. 4516.)

#### HISTORICAL AND REVISION NOTES

Based on title 28, U.S.C., 1940 ed., §43 (Oct. 22, 1913, ch. 32, 38 Stat. 219).

This section is completely rewritten to give effect to changes recommended by the Judicial Conference of the United States.

Section 43 of title 28, U.S.C., 1940 ed., is as follows:

"§43. Venue of suits relating to orders of Interstate Commerce Commission.

"The venue of any suit brought to enforce, suspend, or set aside, in whole or in part, any order of the Interstate Commerce Commission shall be in the judicial district wherein is the residence of the party or any of the parties upon whose petition the order was made, except that where the order does not relate to transportation or is not made upon the petition of any party the venue shall be in the district where the matter complained of in the petition before the commission arises, and except that where the order does not relate either to transportation or to a matter so complained of before the commission the matter covered by the order shall be deemed to arise in the district where one of the petitioners in court has either its principal office or its principal operating office. In case such transportation relates to a through shipment the term 'destination' shall be construed as meaning final destination of such shipment." The amendment of section 207 of title 28, U.S.C., 1940 ed., proposed by the Judicial Conference is:

"Except as otherwise provided in the Act entitled 'An Act to Regulate Commerce', approved February 4, 1887, as amended, the venue of any suit brought to enforce, suspend, or set aside, in whole or in part, any order of the Interstate Commerce Commission shall be in the judicial district wherein is the residence of the party or any of the parties bringing the suit or wherein such party or any of such parties has its principal office."

The revised section substitutes the words "Except as otherwise provided by law" for the words of the conference bill, "in the act entitled 'An Act to Regulate Commerce, approved February 4, 1887, as amended'". (See section 16 of title 49, U.S.C., 1940 ed., which provides for jurisdiction and venue of actions to enforce Interstate Commerce Commission orders for the payment of money.)

#### AMENDMENTS

1992—Subsec. (b). Pub. L. 102-572 substituted "United States Court of Federal Claims" for "United States Claims Court".

1982—Subsec. (b). Pub. L. 97-164 substituted “United States Claims Court” for “Court of Claims”.

1975—Subsec. (a). Pub. L. 93-584 substituted provisions that civil actions under section 1336(a) of this title shall be brought only in a judicial district in which any of the parties bringing the action resides or has its principal office, for provisions that civil actions to enforce, suspend, or set aside in whole or in part orders of the Interstate Commerce Commission shall be brought in such judicial district.

1964—Pub. L. 88-513 designated existing provisions as subsec. (a) and added subsec. (b).

#### EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102-572 effective Oct. 29, 1992, see section 911 of Pub. L. 102-572, set out as a note under section 171 of this title.

#### EFFECTIVE DATE OF 1982 AMENDMENT

Amendment by Pub. L. 97-164 effective Oct. 1, 1982, see section 402 of Pub. L. 97-164, set out as a note under section 171 of this title.

#### EFFECTIVE DATE OF 1975 AMENDMENT

Amendment by Pub. L. 93-584 not applicable to actions commenced on or before last day of first month beginning after Jan. 2, 1975, and actions to enjoin or suspend orders of Interstate Commerce Commission which are pending when this amendment becomes effective shall not be affected thereby, but shall proceed to final disposition under the law existing on the date they were commenced, see section 10 of Pub. L. 93-584, set out as a note under section 2321 of this title.

#### ABOLITION OF INTERSTATE COMMERCE COMMISSION AND TRANSFER OF FUNCTIONS

Interstate Commerce Commission abolished and functions of Commission transferred, except as otherwise provided in Pub. L. 104-88, to Surface Transportation Board effective Jan. 1, 1996, by section 702 of Title 49, Transportation, and section 101 of Pub. L. 104-88, set out as a note under section 701 of Title 49. References to Interstate Commerce Commission deemed to refer to Surface Transportation Board, a member or employee of the Board, or Secretary of Transportation, as appropriate, see section 205 of Pub. L. 104-88, set out as a note under section 701 of Title 49.

#### CROSS REFERENCES

Enforcement and review of Surface Transportation Board's orders, see section 2321 et seq. of this title.

Jurisdiction of district courts in actions involving Surface Transportation Board's orders, see section 1336 of this title.

### § 1399. Partition action involving United States

Any civil action by any tenant in common or joint tenant for the partition of lands, where the United States is one of the tenants in common or joint tenants, may be brought only in the judicial district where such lands are located or, if located in different districts in the same State, in any of such districts.

(June 25, 1948, ch. 646, 62 Stat. 936.)

#### HISTORICAL AND REVISION NOTES

Based on title 28, U.S.C., 1940 ed., § 41(25) (Mar. 3, 1911, ch. 231, § 24, par. 25, 36 Stat. 1094).

Provisions of section 41(25) of title 28, U.S.C., 1940 ed., relating to jurisdiction are the basis of section 1347 of this title.

Words “civil action” were substituted for “suits in equity,” in view of Rule 2 of the Federal Rules of Civil Procedure.

Provision with respect to property in different districts was added to conform with section 1392 of this title.

Changes were made in phraseology.

#### CROSS REFERENCES

Jurisdiction of district court in partition action where United States is tenant in common or joint tenant, see section 1347 of this title.

### § 1400. Patents and copyrights, mask works, and designs

(a) Civil actions, suits, or proceedings arising under any Act of Congress relating to copyrights or exclusive rights in mask works or designs may be instituted in the district in which the defendant or his agent resides or may be found.

(b) Any civil action for patent infringement may be brought in the judicial district where the defendant resides, or where the defendant has committed acts of infringement and has a regular and established place of business.

(June 25, 1948, ch. 646, 62 Stat. 936; Pub. L. 100-702, title X, § 1020(a)(5), Nov. 19, 1988, 102 Stat. 4671; Pub. L. 105-304, title V, § 503(c)(1), (2), Oct. 28, 1998, 112 Stat. 2917; Pub. L. 106-44, § 2(a), Aug. 5, 1999, 113 Stat. 223.)

#### HISTORICAL AND REVISION NOTES

Based on title 28, U.S.C., 1940 ed., § 109, and section 35 of title 17, U.S.C., 1940 ed., Copyrights (Mar. 4, 1909, ch. 320, § 35, 35 Stat. 1084; Mar. 3, 1911, ch. 231, § 48, 36 Stat. 1100).

Section consolidates section 35 of title 17, U.S.C., 1940 ed., with part of section 109 of title 28, U.S.C., 1940 ed., with necessary changes in phraseology.

Subsection (b) is based on section 109 of title 28, U.S.C., 1940 ed., with the following changes:

Words “civil action” were substituted for “suit,” and words “in law or in equity,” after “shall have jurisdiction” were deleted, in view of Rule 2 of the Federal Rules of Civil Procedure.

Words in subsection (b) “where the defendant resides” were substituted for “of which the defendant is an inhabitant.” A corresponding change was made in subsection (a). Words “inhabitant” and “resident,” as respects venue, are synonymous. (See reviser's note under section 1391 of this title.)

Words “whether a person, partnership, or corporation” before “has committed” were omitted as surplusage.

The provisions of section 109 of title 28, U.S.C., 1940 ed., relating to process are incorporated in section 1694 of this title.

Jurisdiction and venue of patent suits against residents of foreign countries or persons residing in plurality of districts, see section 72a of title 35, U.S.C., 1940 ed., Patents.

#### SENATE REVISION AMENDMENT

Title 17 of the United States Code was enacted into positive law by act July 30, 1947, ch. 391, 61 Stat. 652, and, in such enactment, section 35 of the prior title became section 111 of the new title, and all Acts from which sections of the prior title had been derived, were repealed. Therefore, this paragraph should read: “Based on Title 28, U.S.C., 1940 ed., § 109 (Mar. 3, 1911, ch. 231, § 48, 36 Stat. 1100), and section 111 of Title 17, U.S.C., 1946 ed., Copyrights.” By Senate amendment, section 111 of Title 17 U.S.C., is included in the schedule of repeals. See 80th Congress Senate Report No. 1559.

#### AMENDMENTS

1999—Pub. L. 106-44 amended section catchline generally so as to read “Patents and copyrights, mask works, and designs”.

1998—Pub. L. 105-304, § 503(c)(2), amended section catchline generally, substituting “Patents and copyrights, mask works, and designs” for “Patents and copyrights”.

Subsec. (a). Pub. L. 105-304, §503(c)(1), inserted “or designs” after “mask works”.

1988—Subsec. (a). Pub. L. 100-702 inserted “or exclusive rights in mask works” after “copyrights”.

#### FEDERAL RULES OF CIVIL PROCEDURE

Process, see rule 4, Appendix to this title.

#### CROSS REFERENCES

Jurisdiction and venue of patent suits against residents of foreign countries or persons residing in plurality of districts, see sections 146 and 291 of Title 35, Patents.

Jurisdiction of district courts in patent or copyright actions, see section 1338 of this title.

Jurisdiction and legal remedy for unauthorized use or disclosure of patents and technical information, see section 2356 of Title 22, Foreign Relations and Intercourse.

Process in patent infringement action, see section 1694 of this title.

### § 1401. Stockholder's derivative action

Any civil action by a stockholder on behalf of his corporation may be prosecuted in any judicial district where the corporation might have sued the same defendants.

(June 25, 1948, ch. 646, 62 Stat. 936.)

#### HISTORICAL AND REVISION NOTES

Based on title 28, U.S.C., 1940 ed., §112 (part) (Mar. 3, 1911, ch. 231, §51, 36 Stat. 1101; Sept. 19, 1922, ch. 345, 42 Stat. 849; Mar. 4, 1925, ch. 526, §1, 43 Stat. 1264; Apr. 16, 1936, ch. 230, 49 Stat. 1213).

For disposition of other provisions of section 112 of title 28, U.S.C., 1940 ed., see reviser's note under section 1391 of this title.

Words “civil action” were substituted for “suit,” in view of Rule 2 of the Federal Rules of Civil Procedure.

Words “other than said corporation,” after “same defendants,” were omitted as superfluous. Obviously a corporation would not be suing itself.

Changes were made in phraseology.

#### CROSS REFERENCES

Citizenship of corporations for purposes of diversity of citizenship and removability of actions, see section 1332 of this title.

Process in stockholder's derivative action, see section 1695 of this title.

### § 1402. United States as defendant

(a) Any civil action in a district court against the United States under subsection (a) of section 1346 of this title may be prosecuted only:

(1) Except as provided in paragraph (2), in the judicial district where the plaintiff resides;

(2) In the case of a civil action by a corporation under paragraph (1) of subsection (a) of section 1346, in the judicial district in which is located the principal place of business or principal office or agency of the corporation; or if it has no principal place of business or principal office or agency in any judicial district (A) in the judicial district in which is located the office to which was made the return of the tax in respect of which the claim is made, or (B) if no return was made, in the judicial district in which lies the District of Columbia. Notwithstanding the foregoing provisions of this paragraph a district court, for the convenience of the parties and witnesses, in the interest of justice, may transfer any such action to any other district or division.

(b) Any civil action on a tort claim against the United States under subsection (b) of section 1346 of this title may be prosecuted only in the judicial district where the plaintiff resides or wherein the act or omission complained of occurred.

(c) Any civil action against the United States under subsection (c) of section 1346 of this title may be prosecuted only in the judicial district where the property is situated at the time of levy, or if no levy is made, in the judicial district in which the event occurred which gave rise to the cause of action.

(d) Any civil action under section 2409a to quiet title to an estate or interest in real property in which an interest is claimed by the United States shall be brought in the district court of the district where the property is located or, if located in different districts, in any of such districts.

(June 25, 1948, ch. 646, 62 Stat. 937; Pub. L. 85-920, Sept. 2, 1958, 72 Stat. 1770; Pub. L. 89-719, title II, §202(b), Nov. 2, 1966, 80 Stat. 1149; Pub. L. 92-562, §2, Oct. 25, 1972, 86 Stat. 1176; Pub. L. 97-164, title I, §131, Apr. 2, 1982, 96 Stat. 39.)

#### HISTORICAL AND REVISION NOTES

Based on title 28, U.S.C., 1940 ed., §§762, 931(a) (Mar. 3, 1887, ch. 359, §5, 24 Stat. 506; Aug. 2, 1946, ch. 753, §410(a), 60 Stat. 843).

Section consolidates the venue provisions of section 762 of title 28, U.S.C., 1940 ed., with the venue provisions of section 931(a) of such title, the latter provisions relating to tort claims cases. The jurisdictional provisions of such section 931(a) are incorporated in section 1346(b) of this title. For other provisions thereof, see Distribution Table.

Provisions of section 762 of title 28, U.S.C., 1940 ed., relating to the verification and contents of a petition filed against the United States were omitted as unnecessary. Section 265 of title 28, U.S.C., 1940 ed., relative to the petition in cases filed in the Court of Claims was also omitted from the revised title. (See, also, Rule 11 of the Federal Rules of Civil Procedure.)

Words “civil action” were substituted for “suit” in view of Rule 2 of the Federal Rules of Civil Procedure.

Changes were made in phraseology.

#### AMENDMENTS

1982—Subsec. (a). Pub. L. 97-164 inserted “in a district court” after “civil action” in introductory provisions preceding par. (1). The phrase “civil action” also appeared in par. (2), but no change was made to reflect the probable intent of Congress as indicated on page 79 of House Report No. 97-312.

1972—Subsec. (d). Pub. L. 92-562 added subsec. (d).

1966—Subsec. (c). Pub. L. 89-719 added subsec. (c).

1958—Subsec. (a). Pub. L. 85-920 provided for venue and change of venue in tax refund suits by corporation.

#### EFFECTIVE DATE OF 1982 AMENDMENT

Amendment by Pub. L. 97-164 effective Oct. 1, 1982, see section 402 of Pub. L. 97-164, set out as a note under section 171 of this title.

#### EFFECTIVE DATE OF 1966 AMENDMENT

Amendment by Pub. L. 89-719 applicable after Nov. 2, 1966, see section 203 of Pub. L. 89-719, set out as a note under section 1346 of this title.

#### CROSS REFERENCES

Actions on war risk insurance claims, see section 1292 of Title 46, Appendix, Shipping.

Jurisdiction and legal remedy for unauthorized use or disclosure of patents and technical information, see

section 2356 of Title 22, Foreign Relations and Inter-course.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 26 section 7429.

### § 1403. Eminent domain

Proceedings to condemn real estate for the use of the United States or its departments or agencies shall be brought in the district court of the district where the land is located or, if located in different districts in the same State, in any of such districts.

(June 25, 1948, ch. 646, 62 Stat. 937.)

#### HISTORICAL AND REVISION NOTES

Based on section 257 of title 40, U.S.C., 1940 ed., Public Buildings, Property, and Works (Aug. 1, 1888, ch. 728, § 1, 25 Stat. 357; Mar. 3, 1911, ch. 231, § 291, 36 Stat. 1167).

Section constitutes the first clause of the second sentence of section 257, of title 40, U.S.C., 1940 ed. The revised section is expressive of the purpose of such section 257 with necessary changes in phraseology.

The jurisdiction provision of section 257 of title 40, U.S.C., 1940 ed., is incorporated in section 1358 of this title.

The remainder of section 257 of title 40, U.S.C., 1940 ed., is retained in said title 40.

Provision with respect to property in different districts was added to conform with section 1392 of this title.

See, also, section 1392 of this title which fixes venue of an action involving property in different districts in the same State.

#### CROSS REFERENCES

Jurisdiction of district courts in eminent domain proceedings, see section 1358 of this title.

Venue of action involving property in different districts in same state, see section 1392 of this title.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 16 section 79c; title 42 section 2222.

### § 1404. Change of venue

(a) For the convenience of parties and witnesses, in the interest of justice, a district court may transfer any civil action to any other district or division where it might have been brought.

(b) Upon motion, consent or stipulation of all parties, any action, suit or proceeding of a civil nature or any motion or hearing thereof, may be transferred, in the discretion of the court, from the division in which pending to any other division in the same district. Transfer of proceedings in rem brought by or on behalf of the United States may be transferred under this section without the consent of the United States where all other parties request transfer.

(c) A district court may order any civil action to be tried at any place within the division in which it is pending.

(d) As used in this section, the term “district court” includes the District Court of Guam, the District Court for the Northern Mariana Islands, and the District Court of the Virgin Islands, and the term “district” includes the territorial jurisdiction of each such court.

(June 25, 1948, ch. 646, 62 Stat. 937; Pub. L. 87-845, § 9, Oct. 18, 1962, 76A Stat. 699; Pub. L. 104-317, title VI, § 610(a), Oct. 19, 1996, 110 Stat. 3860.)

#### HISTORICAL AND REVISION NOTES

Based on title 28, U.S.C., 1940 ed., §§ 119, 163 (Mar. 3, 1911, ch. 231, § 58, 36 Stat. 1103; Sept. 8, 1916, ch. 475, § 5, 39 Stat. 851).

Section consolidates sections 119 and 163 of title 28, U.S.C., 1940 ed., with necessary changes in phraseology and substance.

Section 119 of title 28, U.S.C., 1940 ed., related only to transfer of cases from one division to another on stipulation of the parties.

Subsection (a) was drafted in accordance with the doctrine of *forum non conveniens*, permitting transfer to a more convenient forum, even though the venue is proper. As an example of the need of such a provision, see *Baltimore & Ohio R. Co. v. Kepner*, 1941, 62 S.Ct. 6, 314 U.S. 44, 86 L.Ed. 28, which was prosecuted under the Federal Employer's Liability Act in New York, although the accident occurred and the employee resided in Ohio. The new subsection requires the court to determine that the transfer is necessary for convenience of the parties and witnesses, and further, that it is in the interest of justice to do so.

Sections 143, 172, 177, and 181 of title 28, U.S.C., 1940 ed., relating to the district courts of Arizona, Montana, New Mexico, and Ohio, contained special provisions similar to subsection (b), applicable to those States. To establish uniformity, the general language of such subsection has been drafted and the special provisions of those sections omitted.

Subsection (b) is based upon section 163 of title 28, U.S.C., 1940 ed., which applied only to the district of Maine. This revised subsection extends to all judicial districts and permits transfer of cases between divisions. Criminal cases may be transferred pursuant to Rules 19-21 of the new Federal Rules of Criminal Procedure, and the criminal provisions of said section 163 are therefore omitted.

#### AMENDMENTS

1996—Subsec. (d). Pub. L. 104-317 amended subsec. (d) generally. Prior to amendment, subsec. (d) read as follows: “As used in this section, ‘district court’ includes the United States District Court for the District of the Canal Zone; and ‘district’ includes the territorial jurisdiction of that court.”

1962—Subsec. (d). Pub. L. 87-845 added subsec. (d).

#### EFFECTIVE DATE OF 1996 AMENDMENT

Section 610(c) of Pub. L. 104-317 provided that: “The amendments made by this section [amending this section and section 1406 of this title] apply to cases pending on the date of the enactment of this Act [Oct. 19, 1996] and to cases commenced on or after such date.”

#### EFFECTIVE DATE OF 1962 AMENDMENT

Amendment by Pub. L. 87-845 effective Jan. 2, 1963, see section 25 of Pub. L. 87-845, set out as a note under section 14 of Title 18, Crimes and Criminal Procedure.

#### FEDERAL RULES OF CRIMINAL PROCEDURE

Venue and transfer of criminal prosecutions, see rule 18 et seq., Title 18, Appendix, Crimes and Criminal Procedure.

#### CROSS REFERENCES

Equal employment opportunity provisions, judicial district of principal office as district in which action might have been brought, see section 2000e-5 of Title 42, The Public Health and Welfare.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1407 of this title; title 42 section 2000e-5.

### § 1405. Creation or alteration of district or division

Actions or proceedings pending at the time of the creation of a new district or division or



transfer of a county or territory from one division or district to another may be tried in the district or division as it existed at the institution of the action or proceeding, or in the district or division so created or to which the county or territory is so transferred as the parties shall agree or the court direct.

(June 25, 1948, ch. 646, 62 Stat. 937.)

#### HISTORICAL AND REVISION NOTES

Based on title 28, U.S.C., 1940 ed., §121 (Mar. 3, 1911, ch. 231, §59, 36 Stat. 1103).

Enforcement of liens in like circumstances is provided by section 1656 of this title.

Remainder of section 121 of title 28, U.S.C., 1940 ed., is incorporated in section 3240 of revised title 18, Crimes and Criminal Procedure (H.R. 1600, 80th Cong.).

Changes were made in phraseology.

### § 1406. Cure or waiver of defects

(a) The district court of a district in which is filed a case laying venue in the wrong division or district shall dismiss, or if it be in the interest of justice, transfer such case to any district or division in which it could have been brought.

(b) Nothing in this chapter shall impair the jurisdiction of a district court of any matter involving a party who does not interpose timely and sufficient objection to the venue.

(c) As used in this section, the term “district court” includes the District Court of Guam, the District Court for the Northern Mariana Islands, and the District Court of the Virgin Islands, and the term “district” includes the territorial jurisdiction of each such court.

(June 25, 1948, ch. 646, 62 Stat. 937; May 24, 1949, ch. 139, §81, 63 Stat. 101; Pub. L. 86-770, §1, Sept. 13, 1960, 74 Stat. 912; Pub. L. 87-845, §10, Oct. 18, 1962, 76A Stat. 699; Pub. L. 97-164, title I, §132, Apr. 2, 1982, 96 Stat. 39; Pub. L. 104-317, title VI, §610(b), Oct. 19, 1996, 110 Stat. 3860.)

#### HISTORICAL AND REVISION NOTES

##### 1948 ACT

Subsection (a) provides statutory sanction for transfer instead of dismissal, where venue is improperly laid.

Subsection (b) is declaratory of existing law. (See *Panama R.R. Co. v. Johnson*, 1924, 44 S.Ct. 391, 264 U.S. 375, 68 L.Ed. 748.) It makes clear the intent of Congress that venue provisions are not jurisdictional but may be waived.

##### 1949 ACT

This section removes an ambiguity in section 1406(a) of title 28, U.S.C., by substituting “may” for “shall”, thus making it clear that the court may decline to transfer a case brought in the wrong district under circumstances where it would not be in the interest of justice to make such transfer.

#### AMENDMENTS

1996—Subsec. (c). Pub. L. 104-317 amended subsec. (c) generally. Prior to amendment, subsec. (c) read as follows: “As used in this section, ‘district court’ includes the United States District Court for the District of the Canal Zone; and ‘district’ includes the territorial jurisdiction of that court.”

1982—Subsecs. (c), (d). Pub. L. 97-164 redesignated subsec. (d) as (c). Former subsec. (c), which provided that if a case within the exclusive jurisdiction of the Court of Claims were filed in a district court, the district court, if it were in the interest of justice, was required to transfer the case to the Court of Claims

where the case would proceed as if it had been filed in the Court of Claims on the date that it was filed in the district court, was struck out.

1962—Subsec. (d). Pub. L. 87-845 added subsec. (d).

1960—Subsec. (c). Pub. L. 86-770 added subsec. (c).

1949—Subsec. (a). Act May 24, 1949, inserted “dismiss, or if it be in the interest of justice”.

#### EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104-317 applicable to cases pending on Oct. 19, 1996, and to cases commenced on or after such date, see section 610(c) of Pub. L. 104-317, set out as a note under section 1404 of this title.

#### EFFECTIVE DATE OF 1982 AMENDMENT

Amendment by Pub. L. 97-164 effective Oct. 1, 1982, see section 402 of Pub. L. 97-164, set out as a note under section 171 of this title.

#### EFFECTIVE DATE OF 1962 AMENDMENT

Amendment by Pub. L. 87-845 effective Jan. 2, 1962, see section 25 of Pub. L. 87-845, set out as a note under section 14 of Title 18, Crimes and Criminal Procedure.

#### EFFECTIVE DATE OF 1960 AMENDMENT

Section 4 of Pub. L. 86-770 provided in part that: “The amendments made by sections 1 and 2 of this Act [adding subsec. (c) of this section and section 1506 of this title] shall apply to any case or proceeding pending on, or brought after, the date of enactment of this Act [Sept. 13, 1960] in the district courts or the Court of Claims.”

#### CROSS REFERENCES

Equal employment opportunity provisions, judicial district of principal office as district in which action might have been brought, see section 2000e-5 of Title 42, The Public Health and Welfare.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 42 section 2000e-5.

### § 1407. Multidistrict litigation

(a) When civil actions involving one or more common questions of fact are pending in different districts, such actions may be transferred to any district for coordinated or consolidated pretrial proceedings. Such transfers shall be made by the judicial panel on multidistrict litigation authorized by this section upon its determination that transfers for such proceedings will be for the convenience of parties and witnesses and will promote the just and efficient conduct of such actions. Each action so transferred shall be remanded by the panel at or before the conclusion of such pretrial proceedings to the district from which it was transferred unless it shall have been previously terminated: *Provided, however*, That the panel may separate any claim, cross-claim, counter-claim, or third-party claim and remand any of such claims before the remainder of the action is remanded.

(b) Such coordinated or consolidated pretrial proceedings shall be conducted by a judge or judges to whom such actions are assigned by the judicial panel on multidistrict litigation. For this purpose, upon request of the panel, a circuit judge or a district judge may be designated and assigned temporarily for service in the transferee district by the Chief Justice of the United States or the chief judge of the circuit, as may be required, in accordance with the provisions of chapter 13 of this title. With the consent of the transferee district court, such actions may be

assigned by the panel to a judge or judges of such district. The judge or judges to whom such actions are assigned, the members of the judicial panel on multidistrict litigation, and other circuit and district judges designated when needed by the panel may exercise the powers of a district judge in any district for the purpose of conducting pretrial depositions in such coordinated or consolidated pretrial proceedings.

(c) Proceedings for the transfer of an action under this section may be initiated by—

- (i) the judicial panel on multidistrict litigation upon its own initiative, or
- (ii) motion filed with the panel by a party in any action in which transfer for coordinated or consolidated pretrial proceedings under this section may be appropriate. A copy of such motion shall be filed in the district court in which the moving party's action is pending.

The panel shall give notice to the parties in all actions in which transfers for coordinated or consolidated pretrial proceedings are contemplated, and such notice shall specify the time and place of any hearing to determine whether such transfer shall be made. Orders of the panel to set a hearing and other orders of the panel issued prior to the order either directing or denying transfer shall be filed in the office of the clerk of the district court in which a transfer hearing is to be or has been held. The panel's order of transfer shall be based upon a record of such hearing at which material evidence may be offered by any party to an action pending in any district that would be affected by the proceedings under this section, and shall be supported by findings of fact and conclusions of law based upon such record. Orders of transfer and such other orders as the panel may make thereafter shall be filed in the office of the clerk of the district court of the transferee district and shall be effective when thus filed. The clerk of the transferee district court shall forthwith transmit a certified copy of the panel's order to transfer to the clerk of the district court from which the action is being transferred. An order denying transfer shall be filed in each district wherein there is a case pending in which the motion for transfer has been made.

(d) The judicial panel on multidistrict litigation shall consist of seven circuit and district judges designated from time to time by the Chief Justice of the United States, no two of whom shall be from the same circuit. The concurrence of four members shall be necessary to any action by the panel.

(e) No proceedings for review of any order of the panel may be permitted except by extraordinary writ pursuant to the provisions of title 28, section 1651, United States Code. Petitions for an extraordinary writ to review an order of the panel to set a transfer hearing and other orders of the panel issued prior to the order either directing or denying transfer shall be filed only in the court of appeals having jurisdiction over the district in which a hearing is to be or has been held. Petitions for an extraordinary writ to review an order to transfer or orders subsequent to transfer shall be filed only in the court of appeals having jurisdiction over the transferee district. There shall be no appeal or review of an order of the panel denying a motion to transfer for consolidated or coordinated proceedings.

(f) The panel may prescribe rules for the conduct of its business not inconsistent with Acts of Congress and the Federal Rules of Civil Procedure.

(g) Nothing in this section shall apply to any action in which the United States is a complainant arising under the antitrust laws. "Antitrust laws" as used herein include those acts referred to in the Act of October 15, 1914, as amended (38 Stat. 730; 15 U.S.C. 12), and also include the Act of June 19, 1936 (49 Stat. 1526; 15 U.S.C. 13, 13a, and 13b) and the Act of September 26, 1914, as added March 21, 1938 (52 Stat. 116, 117; 15 U.S.C. 56); but shall not include section 4A of the Act of October 15, 1914, as added July 7, 1955 (69 Stat. 282; 15 U.S.C. 15a).

(h) Notwithstanding the provisions of section 1404 or subsection (f) of this section, the judicial panel on multidistrict litigation may consolidate and transfer with or without the consent of the parties, for both pretrial purposes and for trial, any action brought under section 4C of the Clayton Act.

(Added Pub. L. 90-296, §1, Apr. 29, 1968, 82 Stat. 109; amended Pub. L. 94-435, title III, §303, Sept. 30, 1976, 90 Stat. 1396.)

#### REFERENCES IN TEXT

The Federal Rules of Civil Procedure, referred to in subsec. (f), are set out in the Appendix to this title.

Section 4C of the Clayton Act, referred to in subsec. (h), is section 4C of act Oct. 15, 1914, ch. 323, as added by Pub. L. 94-435, title III, §301, Sept. 30, 1976, 90 Stat. 1394, which is classified to section 15c of Title 15, Commerce and Trade.

#### AMENDMENTS

1976—Pub. L. 94-435 added subsec. (h).

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 2112 of this title; title 15 section 78u; title 45 section 719.

### RULES OF PROCEDURE OF THE JUDICIAL PANEL ON MULTIDISTRICT LITIGATION

(Adopted February 26, 1981, effective June 1, 1981, as amended to January 23, 2000)

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## I. GENERAL RULES/RULES FOR MULTIDISTRICT LITIGATION UNDER 28 U.S.C. §1407

## Rule 1.1: Definitions

As used in these Rules “Panel” means the members of the Judicial Panel on Multidistrict Litigation appointed by the Chief Justice of the United States pursuant to Section 1407, Title 28, United States Code.

“Clerk of the Panel” means the official appointed by the Panel to act as Clerk of the Panel and shall include those deputized by the Clerk of the Panel to perform or assist in the performance of the duties of the Clerk of the Panel.

“Chairman” means the Chairman of the Judicial Panel on Multidistrict Litigation appointed by the Chief Justice of the United States pursuant to Section 1407, or the member of the Panel designated by the Panel to act as Chairman in the absence or inability of the appointed Chairman.

A “tag-along action” refers to a civil action pending in a district court and involving common questions of fact with actions previously transferred under Section 1407.

(As amended June 14, 1988, eff. July 6, 1988; Sept. 1, 1998, eff. Nov. 2, 1998.)

## Rule 1.2: Practice

Where not fixed by statute or rule, the practice shall be that heretofore customarily followed by the Panel.

(As amended June 14, 1988, eff. July 6, 1988; Sept. 1, 1998, eff. Nov. 2, 1998.)

## Rule 1.3: Failure to Comply with Rules

The Clerk of the Panel may, when a paper submitted for filing is not in compliance with the provisions of these Rules, advise counsel of the deficiencies and a date for full compliance. If full compliance is not accomplished within the established time, the non-complying paper shall nonetheless be filed by the Clerk of the Panel but it may be stricken by order of the Chairman of the Panel.

(As amended June 14, 1988, eff. July 6, 1988; May 3, 1993, eff. July 1, 1993; Sept. 1, 1998, eff. Nov. 2, 1998.)

## Rule 1.4: Admission to Practice Before the Panel and Representation in Transferred Actions

Every member in good standing of the Bar of any district court of the United States is entitled without condition to practice before the Judicial Panel on Multidistrict Litigation. Any attorney of record in any action transferred under

Section 1407 may continue to represent his or her client in any district court of the United States to which such action is transferred. Parties to any action transferred under Section 1407 are not required to obtain local counsel in the district to which such action is transferred.

(As amended June 14, 1988, eff. July 6, 1988; Sept. 1, 1998, eff. Nov. 2, 1998.)

## Rule 1.5: Effect of the Pendency of an Action Before the Panel

The pendency of a motion, order to show cause, conditional transfer order or conditional remand order before the Panel concerning transfer or remand of an action pursuant to 28 U.S.C. §1407 does not affect or suspend orders and pretrial proceedings in the district court in which the action is pending and does not in any way limit the pretrial jurisdiction of that court. A transfer or remand pursuant to 28 U.S.C. §1407 shall be effective when the transfer or remand order is filed in the office of the clerk of the district court of the transferee district.

(As amended June 14, 1988, eff. July 6, 1988; Sept. 1, 1998, eff. Nov. 2, 1998.)

## Rule 1.6: Transfer of Files

(a) Upon receipt of a certified copy of a transfer order from the clerk of the transferee district court, the clerk of the transferor district court shall forward to the clerk of the transferee district court the complete original file and a certified copy of the docket sheet for each transferred action.

(b) If an appeal is pending, or a notice of appeal has been filed, or leave to appeal has been sought under 28 U.S.C. §1292(b) or a petition for an extraordinary writ is pending, in any action included in an order of transfer under 28 U.S.C. §1407, and the original file or parts thereof have been forwarded to the court of appeals, the clerk of the transferor district court shall notify the clerk of the court of appeals of the order of transfer and secure the original file long enough to prepare and transmit to the clerk of the transferee district court a certified copy of all papers contained in the original file and a certified copy of the docket sheet.

(c) If the transfer order provides for the separation and simultaneous remand of any claim, cross-claim, counterclaim, or third-party claim, the clerk of the transferor district court shall retain the original file and shall prepare and transmit to the clerk of the transferee district court a certified copy of the docket sheet and copies of all papers except those relating exclusively to separated and remanded claims.

(d) Upon receipt of an order to remand from the Clerk of the Panel, the transferee district court shall prepare and send to the clerk of the transferor district court the following:

(i) a certified copy of the individual docket sheet for each action being remanded;

(ii) a certified copy of the master docket sheet, if applicable;

(iii) the entire file for each action being remanded, as originally received from the transferor district court and augmented as set out in this rule;

(iv) a certified copy of the final pretrial order, if applicable; and

(v) a “record on remand” to be composed of those parts of the files and records produced during coordinated or consolidated pretrial proceedings which have been stipulated to or designated by counsel as being necessary for any or all proceedings to be conducted following remand. It shall be the responsibility of counsel originally preparing or filing any document to be included in the “record on remand” to furnish on request sufficient copies to the clerk of the transferee district court.

(e) The Clerk of the Panel shall be notified when any files have been transmitted pursuant to this Rule.

(Added June 14, 1988, eff. July 6, 1988; amended Sept. 1, 1998, eff. Nov. 2, 1998.)

#### Rule 5.1: Keeping Records and Files

(a) The records and files of the Panel shall be kept by the Clerk of the Panel at the offices of the Panel. Records and files may be temporarily or permanently removed to such places at such times as the Panel or the Chairman of the Panel shall direct. The Clerk of the Panel may charge fees, as prescribed by the Judicial Conference of the United States, for duplicating records and files. Records and files may be transferred whenever appropriate to the Federal Records Center.

(b) In order to assist the Panel in carrying out its functions, the Clerk of the Panel shall obtain the complaints and docket sheets in all actions under consideration for transfer under 28 U.S.C. § 1407 from the clerk of each district court wherein such actions are pending. The Clerk of the Panel shall similarly obtain any other pleadings and orders that could affect the Panel’s decision under 28 U.S.C. § 1407.

(As amended June 14, 1988, eff. July 6, 1988; May 3, 1993, eff. July 1, 1993; Sept. 1, 1998, eff. Nov. 2, 1998.)

#### Rule 5.11: Place of Filing of Papers

All papers for consideration by the Panel shall be submitted for filing to the Clerk of the Panel by mailing or delivering to:

Clerk of the Panel  
Judicial Panel on Multidistrict Litigation  
Thurgood Marshall Federal Judiciary Building  
One Columbus Circle, N.E., Room G-255, North Lobby  
Washington, D.C. 20002-8004

No papers shall be left with or mailed to a Judge of the Panel.

(As amended June 14, 1988, eff. July 6, 1988; May 3, 1993, eff. July 1, 1993; Sept. 1, 1998, eff. Nov. 2, 1998.)

#### Rule 5.12: Manner of Filing of Papers

(a) An original of the following papers shall be submitted for filing to the Clerk of the Panel: a proof of service pursuant to Rule 5.2(a) and (b) of these Rules, a notice of appearance pursuant to Rule 5.2(c) and (d) of these Rules, a status notice pursuant to Rules 7.2(e), 7.3(e) and 7.4(b) of these Rules, a notice of opposition pursuant to Rules 7.4(c) and 7.6(f)(ii) of these Rules, a notice of re-

lated action pursuant to Rule 7.5(e) of these Rules, an application for extension of time pursuant to Rule 6.2 of these Rules, or a notice of presentation or waiver of oral argument pursuant to Rule 16.2(a) of these Rules. An original and eleven copies of all other papers shall be submitted for filing to the Clerk of the Panel. The Clerk of the Panel may require that additional copies also be submitted for filing.

(b) When papers are submitted for filing, the Clerk of the Panel shall endorse thereon the date for filing.

(c) Copies of motions for transfer of an action or actions pursuant to 28 U.S.C. § 1407 shall be filed in each district court in which an action is pending that will be affected by the motion. Copies of a motion for remand pursuant to 28 U.S.C. § 1407 shall be filed in the Section 1407 transferee district court in which any action affected by the motion is pending.

(d) Papers requiring only an original may be faxed to the Panel office with prior approval of the Clerk of the Panel. No papers requiring multiple copies shall be accepted via fax.

(As amended June 14, 1988, eff. July 6, 1988; May 3, 1993, eff. July 1, 1993; Sept. 1, 1998, eff. Nov. 2, 1998.)

#### Rule 5.2: Service of Papers Filed

(a) All papers filed with the Clerk of the Panel shall be accompanied by proof of previous or simultaneous service on all other parties in all actions involved in the litigation. Service and proof of service shall be made as provided in Rules 5 and 6 of the Federal Rules of Civil Procedure. The proof of service shall indicate the name and complete address of each person served and shall indicate the party represented by each. If a party is not represented by counsel, the proof of service shall indicate the name of the party and the party’s last known address. The proof of service shall indicate why any person named as a party in a constituent complaint was not served with the Section 1407 pleading. The original proof of service shall be filed with the Clerk of the Panel and copies thereof shall be sent to each person included within the proof of service. After the “Panel Service List” described in subsection (d) of this Rule has been received from the Clerk of the Panel, the “Panel Service List” shall be utilized for service of responses to motions and all other filings. In such instances, the “Panel Service List” shall be attached to the proof of service and shall be supplemented in the proof of service in the event of the presence of additional parties or subsequent corrections relating to any party, counsel or address already on the “Panel Service List.”

(b) The proof of service pertaining to motions for transfer of actions pursuant to 28 U.S.C. § 1407 shall certify that copies of the motions have been mailed or otherwise delivered for filing to the clerk of each district court in which an action is pending that will be affected by the motion. The proof of service pertaining to a motion for remand pursuant to 28 U.S.C. § 1407 shall certify that a copy of the motion has been mailed or otherwise delivered for filing to the clerk of the Section 1407 transferee district court in which any action affected by the motion is pending.

(c) Within eleven days of filing of a motion to transfer, an order to show cause or a conditional transfer order, each party or designated attorney shall notify the Clerk of the Panel, in writing, of the name and address of the attorney designated to receive service of all pleadings, notices, orders and other papers relating to practice before the Judicial Panel on Multidistrict Litigation. Only one attorney shall be designated for each party. Any party not represented by counsel shall be served by mailing such pleadings to the party's last known address. Requests for an extension of time to file the designation of attorney shall not be granted except in extraordinary circumstances.

(d) In order to facilitate compliance with subsection (a) of this Rule, the Clerk of the Panel shall prepare and serve on all counsel and parties not represented by counsel, a "Panel Service List" containing the names and addresses of the designated attorneys and the party or parties they represent in the actions under consideration by the Panel and the names and addresses of the parties not represented by counsel in the actions under consideration by the Panel. After the "Panel Service List" has been received from the Clerk of the Panel, notice of subsequent corrections relating to any party, counsel or address on the "Panel Service List" shall be served on all other parties in all actions involved in the litigation.

(e) If following transfer of any group of multidistrict litigation, the transferee district court appoints liaison counsel, this Rule shall be satisfied by serving each party in each affected action and all liaison counsel. Liaison counsel designated by the transferee district court shall receive copies of all Panel orders concerning their particular litigation and shall be responsible for distribution to the parties for whom he or she serves as liaison counsel.

(As amended June 14, 1988, eff. July 6, 1988; May 3, 1993, eff. July 1, 1993; Sept. 1, 1998, eff. Nov. 2, 1998.)

#### Rule 6.2: Applications for Extensions of Time

Any application for an extension of time to file a pleading or perform an act required by these Rules must be in writing, must request a specific number of additional days and may be acted upon by the Clerk of the Panel. Such an application will be evaluated in relation to the impact on the Panel's calendar as well as on the basis of the reasons set forth in support of the application. Any party aggrieved by the Clerk of the Panel's action on such application may submit its objections to the Panel for consideration. Absent exceptional circumstances, no extensions of time shall be granted to file a notice of opposition to either a conditional transfer order or a conditional remand order. All applications for extensions of time shall be filed and served in conformity with Rules 5.12, 5.2 and 7.1 of these Rules.

(As amended June 14, 1988, eff. July 6, 1988; May 3, 1993, eff. July 1, 1993; Sept. 1, 1998, eff. Nov. 2, 1998.)

#### Rule 7.1: Form of Papers Filed

(a) Averments in any motion seeking action by the Panel shall be made in numbered para-

graphs, each of which shall be limited, as far as practicable, to a statement of a single factual averment.

(b) Responses to averments in motions shall be made in numbered paragraphs, each of which shall correspond to the number of the paragraph of the motion to which the responsive paragraph is directed. Each responsive paragraph shall admit or deny wholly or in part the averment of the motion, and shall contain the respondent's version of the subject matter when the averment or the motion is not wholly admitted.

(c) Each pleading filed shall be

- (i) flat and unfolded;
- (ii) plainly written, typed in double space, printed or prepared by means of a duplicating process, without erasures or interlineations which materially deface it;
- (iii) on opaque, unglazed, white paper (not onionskin);
- (iv) approximately  $8\frac{1}{2} \times 11$  inches in size; and
- (v) fastened at the top-left corner without side binding or front or back covers.

(d) The heading on the first page of each pleading shall commence not less than three inches from the top of the page. Each pleading shall bear the heading "Before the Judicial Panel on Multidistrict Litigation," the identification "MDL Docket No. \_\_\_\_" and the descriptive title designated by the Panel for the litigation involved. If the Panel has not yet designated a title, an appropriate descriptive title shall be used.

(e) The final page of each pleading shall contain the name, address and telephone number of the attorney or party in active charge of the case.

(f) Except with the approval of the Panel, each brief submitted for filing with the Panel shall be limited to twenty pages, exclusive of exhibits. Absent exceptional circumstances, motions to exceed page limits shall not be granted.

(g) Exhibits exceeding a cumulative total of 50 pages shall be fastened separately from the accompanying pleading.

(h) Proposed Panel orders shall not be submitted with papers for filing.

(As amended June 14, 1988, eff. July 6, 1988; May 3, 1993, eff. July 1, 1993; Sept. 1, 1998, eff. Nov. 2, 1998.)

#### Rule 7.2: Motion Practice

(a) All requests for action by the Panel under 28 U.S.C. § 1407 shall be made by written motion. Every motion shall be accompanied by:

- (i) a brief in support thereof in which the background of the litigation and factual and legal contentions of the movant shall be concisely stated in separate portions of the brief with citation of applicable authorities; and
- (ii) a schedule giving
  - (A) the complete name of each action involved, not shortened by the use of references such as "et al." or "etc.";
  - (B) the district court and division in which each action is pending;
  - (C) the civil action number of each action; and
  - (D) the name of the judge assigned each action, if known.

(b) The Clerk of the Panel shall notify recipients of a motion of the filing date, caption, MDL docket number, briefing schedule and pertinent Panel policies.

(c) Within twenty days after filing of a motion, all other parties shall file a response thereto. Failure of a party to respond to a motion shall be treated as that party's acquiescence to the action requested in the motion.

(d) The movant may, within five days after the lapse of the time period for filing responsive briefs, file a single brief in reply to any opposition.

(e) Motions, their accompaniments, responses, and replies shall also be governed by Rules 5.12, 5.2 and 7.1 of these Rules.

(f) With respect to any action that is the subject of Panel consideration, counsel shall promptly notify the Clerk of the Panel of any development that would partially or completely moot the matter before the Panel.

(g) A joinder in a motion shall not add any action to the previous motion.

(h) Once a motion is filed, any responsive pleading that purports to be a "motion" in the docket shall be filed by the Clerk of the Panel as a response unless the "motion" adds an action. The Clerk of the Panel, upon designating such a pleading as a motion, shall acknowledge that designation by the distribution of a briefing schedule to all parties in the docket. Response time resulting from an additional motion shall ordinarily be extended only to those parties directly affected by the additional motion. An accelerated briefing schedule for the additional motion may be set by the Clerk of the Panel to conform with the hearing schedule established by the Chairman.

(As amended June 14, 1988, eff. July 6, 1988; May 3, 1993, eff. July 1, 1993; Sept. 1, 1998, eff. Nov. 2, 1998.)

#### Rule 7.3: Show Cause Orders

(a) When transfer of multidistrict litigation is being considered on the initiative of the Panel pursuant to 28 U.S.C. §1407(c)(i), an order shall be filed by the Clerk of the Panel directing the parties to show cause why the action or actions should not be transferred for coordinated or consolidated pretrial proceedings. Any party or counsel in such actions shall promptly notify the Clerk of the Panel of any other federal district court actions related to the litigation encompassed by the show cause order. Such notification shall be made for additional actions pending at the time of the issuance of the show cause order and whenever new actions are filed.

(b) Any party may file a response to the show cause order within twenty days of the filing of said order unless otherwise provided for in the order. Failure of a party to respond to a show cause order shall be treated as that party's acquiescence to the Panel action contemplated in the order.

(c) Within five days after the lapse of the time period for filing a response, any party may file a reply limited to new matters.

(d) Responses and replies shall be filed and served in conformity with Rules 5.12, 5.2 and 7.1 of these Rules.

(e) With respect to any action that is the subject of Panel consideration, counsel shall promptly notify the Clerk of the Panel of any development that would partially or completely moot the matter before the Panel.

(As amended June 14, 1988, eff. July 6, 1988; May 3, 1993, eff. July 1, 1993; Sept. 1, 1998, eff. Nov. 2, 1998.)

#### Rule 7.4: Conditional Transfer Orders for "Tag-Along Actions"

(a) Upon learning of the pendency of a potential "tag-along action," as defined in Rule 1.1 of these Rules, an order may be entered by the Clerk of the Panel transferring that action to the previously designated transferee district court on the basis of the prior hearing or hearings and for the reasons expressed in previous opinions and orders of the Panel in the litigation. The Clerk of the Panel shall serve this order on each party to the litigation but, in order to afford all parties the opportunity to oppose transfer, shall not send the order to the clerk of the transferee district court for fifteen days from the entry thereof.

(b) Parties to an action subject to a conditional transfer order shall notify the Clerk of the Panel within the fifteen-day period if that action is no longer pending in its transferor district court.

(c) Any party opposing the transfer shall file a notice of opposition with the Clerk of the Panel within the fifteen-day period. If a notice of opposition is received by the Clerk of the Panel within this fifteen-day period, the Clerk of the Panel shall not transmit said order to the clerk of the transferee district court until further order of the Panel. The Clerk of the Panel shall notify the parties of the briefing schedule.

(d) Within fifteen days of the filing of its notice of opposition, the party opposing transfer shall file a motion to vacate the conditional transfer order and brief in support thereof. The Clerk of the Panel shall set the motion for hearing at the next appropriate session of the Panel. Failure to file and serve a motion and brief shall be treated as withdrawal of the opposition and the Clerk of the Panel shall forthwith transmit the order to the clerk of the transferee district court.

(e) Conditional transfer orders do not become effective unless and until they are filed with the clerk of the transferee district court.

(f) Notices of opposition and motions to vacate such orders of the Panel and responses thereto shall be governed by Rules 5.12, 5.2, 7.1 and 7.2 of these Rules.

(As amended June 14, 1988, eff. July 6, 1988; Sept. 1, 1998, eff. Nov. 2, 1998.)

#### Rule 7.5: Miscellaneous Provisions Concerning "Tag-Along Actions"

(a) Potential "tag-along actions" filed in the transferee district require no action on the part of the Panel and requests for assignment of such actions to the Section 1407 transferee judge should be made in accordance with local rules for the assignment of related actions.

(b) Upon learning of the pendency of a potential "tag-along action" and having reasonable

anticipation of opposition to transfer of that action, the Panel may direct the Clerk of the Panel to file a show cause order, in accordance with Rule 7.3 of these Rules, instead of a conditional transfer order.

(c) Failure to serve one or more of the defendants in a potential “tag-along action” with the complaint and summons as required by Rule 4 of the Federal Rules of Civil Procedure does not preclude transfer of such action under Section 1407. Such failure, however, may be submitted by such a defendant as a basis for opposing the proposed transfer if prejudice can be shown. The inability of the Clerk of the Panel to serve a conditional transfer order on all plaintiffs or defendants or their counsel shall not render the transfer of the action void but can be submitted by such a party as a basis for moving to remand as to such party if prejudice can be shown.

(d) A civil action apparently involving common questions of fact with actions under consideration by the Panel for transfer under Section 1407, which was filed or came to the attention of the Panel either after the initial hearing before it or too late to be included in the initial hearing, will be treated by the Panel as a potential “tag-along action.”

(e) Any party or counsel in actions previously transferred under Section 1407 or under consideration by the Panel for transfer under Section 1407 shall promptly notify the Clerk of the Panel of any potential “tag-along actions” in which that party is also named or in which that counsel appears.

(As amended June 14, 1988, eff. July 6, 1988; May 3, 1993, eff. July 1, 1993; Sept. 1, 1998, eff. Nov. 2, 1998.)

#### Rule 7.6: Termination and Remand

In the absence of unusual circumstances—

(a) Actions terminated in the transferee district court by valid judgment, including but not limited to summary judgment, judgment of dismissal and judgment upon stipulation, shall not be remanded by the Panel and shall be dismissed by the transferee district court. The clerk of the transferee district court shall send a copy of the order terminating the action to the Clerk of the Panel but shall retain the original files and records unless otherwise directed by the transferee judge or by the Panel.

(b) Each action transferred only for coordinated or consolidated pretrial proceedings that has not been terminated in the transferee district court shall be remanded by the Panel to the transferor district for trial. Actions that were originally filed in the transferee district require no action by the Panel to be reassigned to another judge in the transferee district at the conclusion of the coordinated or consolidated pretrial proceedings affecting those actions.

(c) The Panel shall consider remand of each transferred action or any separable claim, cross-claim, counterclaim or third-party claim at or before the conclusion of coordinated or consolidated pretrial proceedings on

- (i) motion of any party,
- (ii) suggestion of the transferee district court, or
- (iii) the Panel’s own initiative, by entry of an order to show cause, a conditional remand order or other appropriate order.

(d) The Panel is reluctant to order remand absent a suggestion of remand from the transferee district court. If remand is sought by motion of a party, the motion shall be accompanied by:

- (i) an affidavit reciting
  - (A) whether the movant has requested a suggestion of remand from the transferee district court, how the court responded to any request, and, if no such request was made, why;
  - (B) whether all common discovery and other pretrial proceedings have been completed in the action sought to be remanded, and if not, what remains to be done; and
  - (C) whether all orders of the transferee district court have been satisfactorily complied with, and if not, what remains to be done; and

(ii) a copy of the transferee district court’s final pretrial order, where such order has been entered.

Motions to remand and responses thereto shall be governed by Rules 5.12, 5.2, 7.1 and 7.2 of these Rules.

(e) When an order to show cause why an action or actions should not be remanded is entered pursuant to subsection (c), paragraph (iii) of this Rule, any party may file a response within twenty days of the filing of said order unless otherwise provided for in the order. Within five days of filing of a party’s response, any party may file a reply brief limited to new matters. Failure of a party to respond to a show cause order regarding remand shall be treated as that party’s acquiescence to the remand. Responses and replies shall be filed and served in conformity with Rules 5.12, 5.2 and 7.1 of these Rules.

#### (f) Conditional Remand Orders

(i) When the Panel has been advised by the transferee district judge, or otherwise has reason to believe, that pretrial proceedings in the litigation assigned to the transferee district judge are concluded or that remand of an action or actions is otherwise appropriate, an order may be entered by the Clerk of the Panel remanding the action or actions to the transferor district court. The Clerk of the Panel shall serve this order on each party to the litigation but, in order to afford all parties the opportunity to oppose remand, shall not send the order to the clerk of the transferee district court for fifteen days from the entry thereof.

(ii) Any party opposing the remand shall file a notice of opposition with the Clerk of the Panel within the fifteen-day period. If a notice of opposition is received by the Clerk of the Panel within this fifteen-day period, the Clerk of the Panel shall not transmit said order to the clerk of the transferee district court until further order of the Panel. The Clerk of the Panel shall notify the parties of the briefing schedule.

(iii) Within fifteen days of the filing of its notice of opposition, the party opposing remand shall file a motion to vacate the conditional remand order and brief in support thereof. The Clerk of the Panel shall set the motion for hearing at the next appropriate session of the Panel. Failure to file and serve

a motion and brief shall be treated as a withdrawal of the opposition and the Clerk of the Panel shall forthwith transmit the order to the clerk of the transferee district court.

(iv) Conditional remand orders do not become effective unless and until they are filed with the clerk of the transferee district court.

(v) Notices of opposition and motions to vacate such orders of the Panel and responses thereto shall be governed by Rules 5.12, 5.2, 7.1 and 7.2 of these Rules.

(g) Upon receipt of an order to remand from the Clerk of the Panel, the parties shall furnish forthwith to the transferee district clerk a stipulation or designation of the contents of the record or part thereof to be remanded and furnish the transferee district clerk all necessary copies of any pleading or other matter filed so as to enable the transferee district clerk to comply with the order of remand.

(As amended June 14, 1988, eff. July 6, 1988; May 3, 1993, eff. July 1, 1993; Sept. 1, 1998, eff. Nov. 2, 1998.)

#### Rule 16.1: Hearings

(a) Hearings shall be held as ordered by the Panel. The Panel shall convene whenever and wherever desirable or necessary in the judgment of the Chairman. The Chairman shall determine which matters shall be set for hearing at each session and the Clerk of the Panel shall give notice to counsel for all parties involved in the litigation of the time, place and subject matter of such hearing.

(b) No transfer or remand determination regarding any action pending in district court shall be made by the Panel when any party timely opposes such transfer or remand unless a hearing has been held or unless the matter has been submitted on the briefs in accordance with Rule 16.2 of these Rules. Unless otherwise ordered by the Panel, all other matters before the Panel, such as a motion for reconsideration, shall be considered and determined upon the basis of the papers filed.

(c) Except for leave of the Panel on a showing of good cause, only those parties to actions scheduled for hearing who have filed a motion or written response to a motion or order shall be permitted to appear before the Panel and present oral argument.

(d) Counsel for those supporting transfer or remand under Section 1407 and counsel for those opposing such transfer or remand are to confer separately prior to the hearing for the purpose of organizing their arguments and selecting representatives to present all views without duplication.

(e) Unless otherwise ordered by the Panel, a maximum of thirty minutes shall be allotted for argument in each new group of actions being considered for Section 1407 treatment and a maximum of twenty minutes shall be allotted for arguments in all other matters. The time shall be divided equally among those with varying viewpoints. Counsel for the moving party or parties shall generally be heard first.

(f) So far as practicable and consistent with the purposes of Section 1407, the offering of oral testimony before the Panel shall be avoided. Ac-

cordingly, oral testimony shall not be received except upon notice, motion and order of the Panel expressly providing for it.

(g) After an action or group of actions has been set for hearing, the hearing may be continued only by order of the Panel on good cause shown.

(As amended June 14, 1988, eff. July 6, 1988; May 3, 1993, eff. July 1, 1993; Sept. 1, 1998, eff. Nov. 2, 1998.)

#### Rule 16.2: Notice of Presentation or Waiver of Oral Argument, and Matters Submitted on the Briefs

(a) At such time in advance of the date of the hearing as required by the Clerk of the Panel in the notice of hearing, counsel shall notify the Clerk of the Panel in writing of one of the following: (1) counsel will waive oral argument, if all other counsel in the matter set for hearing waive oral argument; (2) counsel will present oral argument, regardless of whether any other counsel in the matter set for hearing presents oral argument; or (3) counsel waives oral argument. All notices of presentation or waiver of oral argument shall be filed and served in conformity with Rules 5.12 and 5.2 of these Rules.

(b) If all parties to a matter set for hearing waive oral argument, the matter shall be submitted for decision by the Panel on the basis of the papers filed. If a party is not present when a matter to be heard is called at the hearing, the matter shall not be rescheduled and that party's position shall be treated as submitted for decision by the Panel on the basis of the papers filed, unless otherwise ordered by the Panel.

(As amended June 14, 1988, eff. July 6, 1988; Sept. 1, 1998, eff. Nov. 2, 1998.)

### II. RULES FOR MULTICIRCUIT PETITIONS FOR REVIEW UNDER 28 U.S.C. §2112(a)(3)

#### Rule 17.1: Random Selection

(a) Upon filing a notice of multicircuit petitions for review, the Clerk of the Panel or designated deputy shall randomly select a circuit court of appeals from a drum containing an entry for each circuit wherein a constituent petition for review is pending. Multiple petitions for review pending in a single circuit shall be allotted only a single entry in the drum. This random selection shall be witnessed by the Clerk of the Panel or a designated deputy other than the random selector. Thereafter, an order on behalf of the Panel shall be issued, signed by the random selector and the witness,

(i) consolidating the petitions for review in the court of appeals for the circuit that was randomly selected; and

(ii) designating that circuit as the one in which the record is to be filed pursuant to Rules 16 and 17 of the Federal Rules of Appellate Procedure.

(b) A consolidation of petitions for review shall be effective when the Panel's consolidation order is filed at the offices of the Panel by the Clerk of the Panel.

(Added June 14, 1988, eff. July 6, 1988; amended Sept. 1, 1998, eff. Nov. 2, 1998.)



## Rule 25.1: Filing of Notices

(a) An original of a notice of multicircuit petitions for review pursuant to 28 U.S.C. § 2112(a)(3) shall be submitted for filing to the Clerk of the Panel by the affected agency, board, commission or officer. The term “agency” as used in Section II of these Rules shall include agency, board, commission or officer.

(b) All notices of multicircuit petitions for review submitted by the affected agency for filing with the Clerk of the Panel shall embrace exclusively petitions for review filed in the courts of appeals within ten days after issuance of an agency order and received by the affected agency from the petitioners within that ten-day period.

(c) When a notice of multicircuit petitions for review is submitted for filing to the Clerk of the Panel, the Clerk of the Panel shall file the notice and endorse thereon the date of filing.

(d) Copies of notices of multicircuit petitions for review shall be filed by the affected agency with the clerk of each circuit court of appeals in which a petition for review is pending that is included in the notice.

(Added June 14, 1988, eff. July 6, 1988; amended May 3, 1993, eff. July 1, 1993; Sept. 1, 1998, eff. Nov. 2, 1998.)

## Rule 25.2: Accompaniments to Notices

(a) All notices of multicircuit petitions for review shall be accompanied by:

(i) a copy of each involved petition for review as the petition for review is defined in 28 U.S.C. § 2112(a)(2); and

(ii) a schedule giving

(A) the date of the relevant agency order;

(B) the case name of each petition for review involved;

(C) the circuit court of appeals in which each petition for review is pending;

(D) the appellate docket number of each petition for review;

(E) the date of filing by the court of appeals of each petition for review; and

(F) the date of receipt by the agency of each petition for review.

(b) The schedule in Subsection (a)(ii) of this Rule shall also be governed by Rules 25.1, 25.3 and 25.4(a) of these Rules.

(Added June 14, 1988, eff. July 6, 1988; amended Sept. 1, 1998, eff. Nov. 2, 1998.)

## Rule 25.3: Service of Notices

(a) All notices of multicircuit petitions for review shall be accompanied by proof of service by the affected agency on all other parties in all petitions for review included in the notice. Service and proof of service shall be made as provided in Rule 25 of the Federal Rules of Appellate Procedure. The proof of service shall state the name and address of each person served and shall indicate the party represented by each. If a party is not represented by counsel, the proof of service shall indicate the name of the party and his or her last known address. The original proof of service shall be submitted by the affected agency for filing with the Clerk of the Panel and cop-

ies thereof shall be sent by the affected agency to each person included within the proof of service.

(b) The proof of service pertaining to notices of multicircuit petitions for review shall certify that copies of the notices have been mailed or otherwise delivered by the affected agency for filing to the clerk of each circuit court of appeals in which a petition for review is pending that is included in the notice.

(Added June 14, 1988, eff. July 6, 1988; amended Sept. 1, 1998, eff. Nov. 2, 1998.)

## Rule 25.4: Form of Notices

(a) Each notice of multicircuit petitions for review shall be

(i) flat and unfolded;

(ii) plainly written, typed in double space, printed or prepared by means of a duplicating process, without erasures or interlineations which materially deface it;

(iii) on opaque, unglazed white paper (not onionskin);

(iv) approximately 8½ × 11 inches in size; and

(v) fastened at the top-left corner without side bindings or front or back covers.

(b) The heading on the first page of each notice of multicircuit petitions for review shall commence not less than three inches from the top of the page. Each notice shall bear the heading “Notice to the Judicial Panel on Multidistrict Litigation of Multicircuit Petitions for Review,” followed by a brief caption identifying the involved agency, the relevant agency order, and the date of the order.

(c) The final page of each notice of multicircuit petitions for review shall contain the name, address and telephone number of the individual or individuals who submitted the notice on behalf of the agency.

(Added June 14, 1988, eff. July 6, 1988; amended May 3, 1993, eff. July 1, 1993; Sept. 1, 1998, eff. Nov. 2, 1998.)

## Rule 25.5: Service of Panel Consolidation Order

(a) The Clerk of the Panel shall serve the Panel’s consolidation order on the affected agency through the individual or individuals, as identified in Rule 25.4(c) of these Rules, who submitted the notice of multicircuit petitions for review on behalf of the agency.

(b) That individual or individuals, or anyone else designated by the agency, shall promptly serve the Panel’s consolidation order on all other parties in all petitions for review included in the Panel’s consolidation order, and shall promptly submit a proof of that service to the Clerk of the Panel. Service and proof of that service shall also be governed by Rule 25.3 of these Rules.

(c) The Clerk of the Panel shall serve the Panel’s consolidation order on the clerks of all circuit courts of appeals that were among the candidates for the Panel’s random selection.

(Added June 14, 1988, eff. July 6, 1988; amended Sept. 1, 1998, eff. Nov. 2, 1998.)

**§ 1408. Venue of cases under title 11**

Except as provided in section 1410 of this title, a case under title 11 may be commenced in the district court for the district—

(1) in which the domicile, residence, principal place of business in the United States, or principal assets in the United States, of the person or entity that is the subject of such case have been located for the one hundred and eighty days immediately preceding such commencement, or for a longer portion of such one-hundred-and-eighty-day period than the domicile, residence, or principal place of business, in the United States, or principal assets in the United States, of such person were located in any other district; or

(2) in which there is pending a case under title 11 concerning such person's affiliate, general partner, or partnership.

(Added Pub. L. 98-353, title I, §102(a), July 10, 1984, 98 Stat. 334.)

**PRIOR PROVISIONS**

A prior section 1408, added by Pub. L. 95-598, title II, §240(a), Nov. 6, 1978, 92 Stat. 2668, which related to bankruptcy appeals, did not become effective pursuant to section 402(b) of Pub. L. 95-598, as amended, set out as an Effective Date note preceding section 101 of Title 11, Bankruptcy.

**EFFECTIVE DATE**

Section effective July 10, 1984, see section 122(a) of Pub. L. 98-353, set out as a note under section 151 of this title.

**§ 1409. Venue of proceedings arising under title 11 or arising in or related to cases under title 11**

(a) Except as otherwise provided in subsections (b) and (d), a proceeding arising under title 11 or arising in or related to a case under title 11 may be commenced in the district court in which such case is pending.

(b) Except as provided in subsection (d) of this section, a trustee in a case under title 11 may commence a proceeding arising in or related to such case to recover a money judgment of or property worth less than \$1,000 or a consumer debt of less than \$5,000 only in the district court for the district in which the defendant resides.

(c) Except as provided in subsection (b) of this section, a trustee in a case under title 11 may commence a proceeding arising in or related to such case as statutory successor to the debtor or creditors under section 541 or 544(b) of title 11 in the district court for the district where the State or Federal court sits in which, under applicable nonbankruptcy venue provisions, the debtor or creditors, as the case may be, may have commenced an action on which such proceeding is based if the case under title 11 had not been commenced.

(d) A trustee may commence a proceeding arising under title 11 or arising in or related to a case under title 11 based on a claim arising after the commencement of such case from the operation of the business of the debtor only in the district court for the district where a State or Federal court sits in which, under applicable nonbankruptcy venue provisions, an action on such claim may have been brought.

(e) A proceeding arising under title 11 or arising in or related to a case under title 11, based on a claim arising after the commencement of such case from the operation of the business of the debtor, may be commenced against the representative of the estate in such case in the district court for the district where the State or Federal court sits in which the party commencing such proceeding may, under applicable nonbankruptcy venue provisions, have brought an action on such claim, or in the district court in which such case is pending.

(Added Pub. L. 98-353, title I, §102(a), July 10, 1984, 98 Stat. 334.)

**EFFECTIVE DATE**

Section effective July 10, 1984, see section 122(a) of Pub. L. 98-353, set out as a note under section 151 of this title.

**§ 1410. Venue of cases ancillary to foreign proceedings**

(a) A case under section 304 of title 11 to enjoin the commencement or continuation of an action or proceeding in a State or Federal court, or the enforcement of a judgment, may be commenced only in the district court for the district where the State or Federal court sits in which is pending the action or proceeding against which the injunction is sought.

(b) A case under section 304 of title 11 to enjoin the enforcement of a lien against a property, or to require the turnover of property of an estate, may be commenced only in the district court for the district in which such property is found.

(c) A case under section 304 of title 11, other than a case specified in subsection (a) or (b) of this section, may be commenced only in the district court for the district in which is located the principal place of business in the United States, or the principal assets in the United States, of the estate that is the subject of such case.

(Added Pub. L. 98-353, title I, §102(a), July 10, 1984, 98 Stat. 335.)

**EFFECTIVE DATE**

Section effective July 10, 1984, see section 122(a) of Pub. L. 98-353, set out as a note under section 151 of this title.

**SECTION REFERRED TO IN OTHER SECTIONS**

This section is referred to in section 1408 of this title.

**§ 1411. Jury trials**

(a) Except as provided in subsection (b) of this section, this chapter and title 11 do not affect any right to trial by jury that an individual has under applicable nonbankruptcy law with regard to a personal injury or wrongful death tort claim.

(b) The district court may order the issues arising under section 303 of title 11 to be tried without a jury.

(Added Pub. L. 98-353, title I, §102(a), July 10, 1984, 98 Stat. 335.)

**EFFECTIVE DATE**

Section effective July 10, 1984, except that subsec. (a) not applicable with respect to cases under Title 11,

Bankruptcy, that are pending on July 10, 1984, or to proceedings arising in or related to such cases, see section 122(a), (b) of Pub. L. 98-353, set out as a note under section 151 of this title.

### § 1412. Change of venue

A district court may transfer a case or proceeding under title 11 to a district court for another district, in the interest of justice or for the convenience of the parties.

(Added Pub. L. 98-353, title I, §102(a), July 10, 1984, 98 Stat. 335.)

#### EFFECTIVE DATE

Section effective July 10, 1984, see section 122(a) of Pub. L. 98-353, set out as a note under section 151 of this title.

### § 1413. Venue of cases under chapter 5 of title 3

Notwithstanding the preceding provisions of this chapter, a civil action under section 1346(g) may be brought in the United States district court for the district in which the employee is employed or in the United States District Court for the District of Columbia.

(Added Pub. L. 104-331, §3(b)(2)(A), Oct. 26, 1996, 110 Stat. 4069.)

#### CODIFICATION

Pub. L. 104-331, §3(b)(2)(A), which directed the amendment of chapter 37 of this title by adding this section at end, was executed by adding this section at the end of chapter 87 of this title to reflect the probable intent of Congress.

#### EFFECTIVE DATE

Section effective Oct. 1, 1997, see section 3(d) of Pub. L. 104-331, set out as a note under section 1296 of this title.

## CHAPTER 89—DISTRICT COURTS; REMOVAL OF CASES FROM STATE COURTS

Sec.

- 1441. Actions removable generally.
- 1442. Federal officers and agencies sued or prosecuted.<sup>1</sup>
- 1442a. Members of armed forces sued or prosecuted.
- 1443. Civil rights cases.
- 1444. Foreclosure action against United States.
- 1445. Nonremovable actions.
- 1446. Procedure for removal.
- 1447. Procedure after removal generally.
- 1448. Process after removal.
- 1449. State court record supplied.
- 1450. Attachment or sequestration; securities.
- 1451. Definitions.
- 1452. Removal of claims related to bankruptcy cases.

#### AMENDMENTS

1996—Pub. L. 104-317, title II, §206(b), Oct. 19, 1996, 110 Stat. 3850, inserted “and agencies” after “officers” in item 1442.

1984—Pub. L. 98-353, title I, §103(b), July 10, 1984, 98 Stat. 335, added item 1452.

1970—Pub. L. 91-358, title I, §172(d)(2), July 29, 1970, 84 Stat. 591, added item 1451.

1958—Pub. L. 85-554, §5(b), July 25, 1958, 72 Stat. 416, substituted “Nonremovable actions” for “Carriers; non-removable actions” in item 1445.

1956—Act Aug. 10, 1956, ch. 1041, §19(b), 70A Stat. 627, added item 1442a.

<sup>1</sup> So in original. Does not conform to section catchline.

#### CROSS REFERENCES

Puerto Rico, removal of causes to United States District Court of Puerto Rico, see section 864 of Title 48, Territories and Insular Possessions.

#### CHAPTER REFERRED TO IN OTHER SECTION

This chapter is referred to in title 33 section 1323; title 39 section 409; title 42 section 7192.

### § 1441. Actions removable generally

(a) Except as otherwise expressly provided by Act of Congress, any civil action brought in a State court of which the district courts of the United States have original jurisdiction, may be removed by the defendant or the defendants, to the district court of the United States for the district and division embracing the place where such action is pending. For purposes of removal under this chapter, the citizenship of defendants sued under fictitious names shall be disregarded.

(b) Any civil action of which the district courts have original jurisdiction founded on a claim or right arising under the Constitution, treaties or laws of the United States shall be removable without regard to the citizenship or residence of the parties. Any other such action shall be removable only if none of the parties in interest properly joined and served as defendants is a citizen of the State in which such action is brought.

(c) Whenever a separate and independent claim or cause of action within the jurisdiction conferred by section 1331 of this title is joined with one or more otherwise non-removable claims or causes of action, the entire case may be removed and the district court may determine all issues therein, or, in its discretion, may remand all matters in which State law predominates.

(d) Any civil action brought in a State court against a foreign state as defined in section 1603(a) of this title may be removed by the foreign state to the district court of the United States for the district and division embracing the place where such action is pending. Upon removal the action shall be tried by the court without jury. Where removal is based upon this subsection, the time limitations of section 1446(b) of this chapter may be enlarged at any time for cause shown.

(e) The court to which such civil action is removed is not precluded from hearing and determining any claim in such civil action because the State court from which such civil action is removed did not have jurisdiction over that claim.

(June 25, 1948, ch. 646, 62 Stat. 937; Pub. L. 94-583, §6, Oct. 21, 1976, 90 Stat. 2898; Pub. L. 99-336, §3(a), June 19, 1986, 100 Stat. 637; Pub. L. 100-702, title X, §1016(a), Nov. 19, 1988, 102 Stat. 4669; Pub. L. 101-650, title III, §312, Dec. 1, 1990, 104 Stat. 5114; Pub. L. 102-198, §4, Dec. 9, 1991, 105 Stat. 1623.)

#### HISTORICAL AND REVISION NOTES

Based on title 28, U.S.C., 1940 ed., §§71, 114 (Mar. 3, 1911, ch. 231, §§28, 53, 36 Stat. 1094, 1101; Jan. 20, 1914, ch. 11, 38 Stat. 278; Jan. 31, 1928, ch. 14, §1, 45 Stat. 54).

Section consolidates removal provisions of sections 71 and 114 of title 28, U.S.C., 1940 ed., and is intended to resolve ambiguities and conflicts of decisions.

Phrases such as “in suits of a civil nature, at law or in equity,” the words “case,” “cause,” “suit,” and the